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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88883; File No. SR-CBOE-2020-045]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule

May 15, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 1, 2020, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fees schedule in connection with the fees related to orders and auction responses executed in S&P 500 Index ("SPX") and SPX Weekly ("SPXW") options in the Automated Improvement Mechanism ("AIM") Auction.

AIM includes functionality in which a Trading Permit Holder ("TPH") (an "Initiating TPH") may electronically submit for execution an order it represents as agent on behalf of a customer,³ broker dealer, or any other person or entity ("Agency Order") against any other order it represents as agent, as well as against principal interest in AIM (an "Initiating Order"), provided it submits the Agency Order for electronic execution into an AIM Auction.⁴ The Exchange may designate any class of options traded on Cboe Options as eligible for AIM. The Exchange notes that all Users, other than the Initiating TPH, may submit responses to an Auction ("AIM Responses"). AIM Auctions take into account AIM Responses to the applicable Auction as well as contra interest resting on the Cboe Options Book at the conclusion of the Auction ("unrelated orders"), regardless of whether such unrelated orders were already present on the Book when the Agency Order was received by the Exchange or were received after the Exchange commenced the applicable Auction. If contracts remain from one or more unrelated

³ The term "customer" means a Public Customer or a broker-dealer. The term "Public Customer" means a person that is not a broker-dealer. See Rule 1.1.

⁴ See Rule 5.37 (AIM); Rule 5.38 (Complex AIM); and Rule 5.73 (FLEX AIM).

orders at the time the Auction ends, they are considered for participation in the AIM order allocation process.

As of March 16, 2020, the Exchange suspended open outcry trading to help prevent the spread of the novel coronavirus and is currently operating in an all-electronic configuration. When the Exchange is operating in a hybrid environment with open outcry and electronic trading, the Exchange does not activate AIM in SPX and SPXW options. However, when the Exchange suspended open outcry trading, the Exchange activated AIM for SPX and SPXW options in an all-electronic environment to provide TPHs with a mechanism to execute crosses electronically, as they could no longer represent those crosses for open outcry execution. Footnote 12 in the Fees Schedule provides specifically that in the event the Exchange operates in a screen-based only environment, AIM may be available for SPX and SPXW during Regular Trading Hours. In light of the extended closure of the trading floor, the Exchange proposes to adopt new pricing changes and update a previous fee change that the Exchange believes is appropriate when the trading floor is inoperable for an extended period of time.

Specifically, the Exchange proposes to adopt an AIM Contra Surcharge of \$0.10 per contract for AIM Contra orders, and an AIM Response Surcharge of \$0.05 per contract for AIM Response orders, executed in SPX and SPXW and applicable to all market participants. The Exchange also proposes to amend footnote 12, which governs pricing changes in the event the Exchange trading floor becomes inoperable, to provide clarity in that the AIM Contra Surcharge and AIM Response Surcharge will apply to all SPX/SPXW AIM Contra and AIM Response/Priority Response orders, respectively, when the Exchange operates in a screen-based only environment.

The Exchange also proposes to amend the AIM Execution Surcharge Fee,⁵ which also applies when the Exchange operates in a screen-based only environment to all market participant AIM Agency/Primary orders in SPX/SPXW,⁶ from \$0.05 per contract to \$0.10 per contract.

As stated, since the trading floor has become inoperable, the only execution opportunities currently available for SPX and SPXW are electronic executions. The Exchange still wishes to encourage floor brokers to continue to conduct business on the Exchange, and, in order to approximate the trading floor environment electronically, the Exchange has activated AIM for SPX/SPXW, which historically have not been designated as eligible for AIM Auctions while the trading floor is operable. As such, the Exchange does not wish to discourage floor brokers from executing SPX and SPXW volume via AIM when the trading floor is inoperable, yet it also wishes to continue to assess fees for volume usually applicable to open-outcry trading, which volume has recently been moved to electronic channels. Due to the increased number of orders executed via AIM as a result of the transition of SPX and SPXW to an all-electronic trading environment, the proposed fees are designed to allow the Exchange to recoup the costs associated with implementing and maintaining AIM for SPX/SPXW while the trading floor remains inoperable.

⁵ Currently, this fee is displayed in one line item as “AIM and RFC Execution Surcharge”. In light of the proposed change only to the AIM Execution Surcharge, the proposed fee change updates this into two separate line items, “AIM Agency/Primary Surcharge Fee” and “RFC Execution Surcharge Fee”. The Exchange also notes that it adds “Agency/Primary” to the title of the AIM Execution Surcharge Fee to add additional clarity as to which type of AIM orders the surcharge applies (as currently noted in footnote 12 of the Fees Schedule).

⁶ See Cboe Options Fees Schedule, footnote 12.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,⁷ in general, and furthers the requirements of Section 6(b)(4),⁸ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that its proposed adoption of a surcharge for AIM Response and AIM Contra orders in SPX and SPXW, as well as amending the surcharge for AIM Agency/Primary executions is consistent with Section 6(b)(4) of the Act in that the proposal is reasonable, equitable and not unfairly discriminatory. The Exchange believes that it is reasonable to assess a surcharge of \$0.05 for all AIM Responses, \$0.10 for all AIM Contra orders, and \$0.10 for all AIM Agency/Primary orders in SPX/SPXW while AIM is activated for SPX/SPXW in the current screen-based only environment because it is intended to recoup the costs associated with implementing and maintaining AIM for orders in SPX/SPXW. Indeed, the Exchange has experienced a significant increase in SPX/SPXW AIM orders since the activation of AIM in such classes, as the closure of the Exchange's trading floor essentially eliminated the sole mechanism by which TPHs could cross orders in SPX/SPXW.

The Exchange also believes that the proposed fees in connection with AIM Responses and AIM Contra, and AIM Agency/Primary orders are reasonable and equitable because they do not represent a significant departure from, or are less than, other surcharge fees provided by the Fees Schedule for executions in SPX and other index classes. For example, the current Fees Schedule provides for a surcharge of \$0.25 exotic surcharge applicable to all Customer orders,

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

as well as a \$0.20 surcharge for Customer Maker, non-turner orders executed in VIX.⁹ Additionally, the Exchange notes that, while the trading floor remains inoperable, it continues to assess an execution surcharge of \$0.21 per contract for non-AIM, non-Market-Maker orders executed in SPX and an execution surcharge of \$0.13 per contract for non-AIM, non-Market-Maker orders executed in SPXW.¹⁰

Finally, the Exchange believes that the proposed fees are equitable and not unfairly discriminatory because the proposed fees for AIM Responses and AIM Contra, as well as AIM Agency/Primary orders will apply equally to all market participants, i.e. all TPHs will be assessed the same amount per qualifying order. In addition to this, the Exchange believes that adopting a lesser surcharge for AIM Responses in SPX/SPXW is equitable and not unfairly discriminatory as it is designed to encourage more Responses in AIM while it is activated in SPX thereby increasing the opportunities for price improvement for all orders executed during the AIM Auction. The Exchange believes that increased opportunities for price improvement through the AIM Auctions would, in turn, facilitate a potential increase in SPX liquidity through the AIM Auctions, which would benefit all participants in the market, particularly while the trading floor remains inoperable.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes the proposed changes are not intended to address any competitive issue, but rather to address fee changes it believes are reasonable now that the

⁹ Applies to all such Customer orders in VIX with a premium of \$1.00 or greater.

¹⁰ See Cboe Options Fees Schedule, footnote 12.

trading floor is currently inoperable, thereby only permitting electronic participation on the Exchange. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply equally in the same manner to all market participants submitting qualifying orders (i.e. AIM Responses and AIM Contra, as well as AIM Agency/Primary orders) in SPX/SPXW. In addition to this, and as stated above, the Exchange does not believe the proposed rule change to adopt a lesser fee for AIM Responses in SPX/SPXW will impose any burden on intramarket competition because it is designed to encourage AIM Responses in SPX/SPXW. A high level of AIM Responses would increase the opportunities for price improvement during the AIM Auctions, in turn, potentially attracting further liquidity to the AIM Auctions in SPX/SPXW to the benefit of all market participants. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because SPX and SPXW options are proprietary products that are only traded on Cboe Options and, in addition to this, the proposed changes only affect trading on the Exchange in limited circumstances.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and paragraph (f) of Rule 19b-4¹² thereunder. At any time within 60 days of the filing of

¹¹ 15 U.S.C. 78s(b)(3)(A).

the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2020-045 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2020-045. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the

¹² 17 CFR 240.19b-4(f).

proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2020-045 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,
Assistant Secretary.

¹³ 17 CFR 200.30-3(a)(12).

